Supreme Court, U.S.
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No. 99-1659

In The

Supreme Court of the United States

SHARON P.,

Petitioner,

vs.

ARMAN, LTD., APCOA, INC. dba PARKING SERVICES, INC., et al.,

Respondents.

On Petition For Writ Of Certiorari To The California Supreme Court

OPPOSITION OF RESPONDENT APCOA, INC. TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION AND SUMMARY OF ARGUMENT

This matter involves a state court's adjudication of the rights and liabilities of its private citizens under its common law negligence principles. More specifically, it involves the decision by the California Supreme Court that an owner (Arman, Ltd.) and operator (Apcoa, Inc.) of a parking garage owed no duty to secure the premises against the armed sexual assault committed against Petitioner by a third party assailant. In an attempt to circumvent an unfavorable final result, Petitioner has mischaracterized the decision of the California Supreme Court so as to raise purported due process and equal protection violations where none exist. The simple fact is that no question of federal law, whether constitutional or otherwise, was ever raised, argued or decided at any of the three levels of the state judicial system before this petition was filed.

This Court therefore lacks jurisdiction to review this matter and should deny the Petition for Writ of Certiorari filed by Sharon P.

MISSTATEMENT OF LAW BY PETITIONER

As a preliminary matter, the question presented by Petitioner misstates the rule applied by the California Supreme Court in this case as a " 'prior similar incidents' rule . . . in which they (sic.) conclude that no duty runs to the first person injured on property by a third party." (Petition, p. i-ii.) The correct rule, established by the California Supreme Court in prior decisions, and faithfully followed by the Court again in this case, is that "a

'high degree of foreseeability' is required in order to find that the scope of a landowner's duty of care includes the hiring of security guards to protect against violent crime by third parties." *Sharon P. v. Arman, Ltd.*, 21 Cal. 4th 1181, 1190, 1199 (1999) (App.10 and 25 to Petition); *see also Ann M. v. Pacific Plaza Shopping Center*, 6 Cal. 4th 666, 679 (1993). The Court in this case emphasized that the "crucial factor" in the analysis of a landowner's duty is foreseeability of the harm, and that the scope of duty depends on the type of crime involved. 21 Cal. 4th 1189, 1195. "[D]uty . . . is determined by a balancing of 'foreseeability' of the criminal acts against the 'burdensomeness, vagueness, and efficacy' of the proposed security measures." *Id.* at 1195. In doing so, the Court rejected Petitioner's argument that "minimal security measures" short of hiring armed security guards (such as keeping the garage brightly lit, cleaning, and hooking up security cameras) would have deterred the violent sexual assault committed on Petitioner. *Id.* at 1196.

With regard to the issue of foreseeability, the Court carefully examined the evidence presented below and concluded that the sexual assault committed on petitioner in this case was not sufficiently foreseeable to impose the prohibitive cost of hiring round-the-clock armed security guards because there was no evidence of any criminal activity at the garage within the past ten years, (*Id.* at 1195) and there was no evidence of any sexual assaults committed either at the garage, the adjacent commercial building, or any "substantially similar business establishment in the immediate proximity" (*Id.* at 1198). The Court also concluded that the seven bank robberies relied upon by the plaintiff did not supply the sufficient level of

foreseeability because they were not only at a different set of premises, but were substantially dissimilar to the sexual assault in this case. *Sharon P.*, 21 Cal. 4th at 1195. Thus, the Court's holding was far from requiring an identical prior crime at the identical premises for every type of crime before allowing recovery of damages, as Petitioner would have this Court believe.

As such, the court's decision is based on balancing the interests of the aggrieved victim of third party crime against considerations of fairness and reasonable notice to the premises owner/possessor, and not the slightest hint of an "arbitrary or capricious classification" can be found in the Court's decision so as to trigger any due process and equal protection concerns.

ARGUMENT

I. This Court Lacks Jurisdiction To Review The Decision Of The California Supreme Court.

Petitioner has invoked the jurisdiction of this Court under 28 U.S.C. § 1257(a). Section 1257(a) provides:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or

statutes of, or any commission held or authority exercised under, the United States.

This Court has consistently held that jurisdiction on writ of certiorari to a state court will not obtain unless there has been an erroneous adjudication of a "substantial" or "important" question of federal law by the state's highest court. *Zucht v. King*, 260 U.S. 174, 176 (1922). *See also Herb v. Pitcairn*, 324 U.S. 117, 125-126 (1945); *Uhler v. American Federation of Labor Congress of Industrial Organizations*, 468 U.S. 1310, 1311 (1984); Rule 10 of the Supreme Court Rules. "Our only power over State judgments is to correct them to the extent that they incorrectly adjudge federal rights." *Herb*, 324 U.S. at 125-126. Even where the State court decision rests in part on an incorrect ruling of a substantial federal question, this Court cannot grant review where the decision rests on an independent and adequate state-law ground that is dispositive of the outcome. *Uhler*, 468 U.S. at 1311. Writ of Certiorari will be "dismissed as improvidently granted because the judgment rests on an adequate State ground." *Wilson v. Loew's Inc.*, 355 U.S. 597, 598 (1958).

The decision of the California Supreme Court in this case rests entirely on the state's common law negligence principles. Review of the decision attached as an appendix to the Petition will readily reveal that not a single question of federal law is mentioned by the court, much less decided by it. This Court therefore lacks jurisdiction to review this matter under its own rules and well-established precedent.

Petitioner's claim that the decision of the California Supreme Court violates the due process and equal protection clauses of the Fourteenth Amendment cannot be made for the first time on certiorari to this Court. *Cardinale v. Louisiana,* 394 U.S. 437, 438 (1969). "It was very early established that the Court will not decide federal constitutional issues raised here for the first time on review of state court decisions" (*Id.* at 438) for reasons of "comity to the states, and . . . a constellation of practical considerations." *Bankers Life & Casualty Co. v. Crenshaw,* 486 U.S. 71, 79 (1988). Moreover, when the opinion of the state's highest court makes no reference to the claimed federal issue, as in this case, the Supreme Court will assume that the issue was not properly raised so as to confer jurisdiction on writ of certiorari, and it is up to the Petitioner to prove otherwise. *Street v. New York,* 394 U.S. 576, 582 (1969). Petitioner is not in a position to claim that the constitutional issues did not arise until the California Supreme Court issued its decision inasmuch as the same legal principles were used by the trial court in granting the defendants' motion for summary judgment.

Finally, this Court's own rules require the Petitioner to include in the Petition a "specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears . . . so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to

review the judgment on a writ of certiorari." Rule 14(g)(i). The absence of such a statement from the Petition in this case in itself attests to the absence of jurisdiction to review the decision of the California Supreme Court.

II. Differences Of State Law Among The Several States Do Not Confer Jurisdiction Upon This Court.

As an alternative basis for jurisdiction, Petitioner points to some nine other states which have presumably adopted tests other than the one adopted by California for determination of a premises owner/possessor's liability for third party crime. Although conflicts between the individual states as to "an important federal question," may give rise to jurisdiction by this Court, (See e.g. Rule 10(b)), purported "conflicts" as to state tort law issues provide no jurisdictional grounds on a writ of certiorari.

III. The Applicable Equal Protection Test Is Satisfied.

Assuming, arguendo, the decision of the California Supreme Court afforded any unequal treatment to first victims of crime vis-a-vis recovery of civil damages against the premises owner, there being no "suspect classification" or deprivation of a fundamental right, the state would only need to satisfy a "rational basis test" to pass constitutional muster. *City of Dallas v. Stanglin*, 490 U.S. 19, 23 (1989). Under that test, the state action need only be rationally related to a legitimate state interest. *Id.* at 23. The significant policy considerations set forth by the court in reaching its decision, including setting of fair

and reasonable parameters of civil liability on business owners and operators for crimes they did not commit, the prohibitive cost of hiring security guards to deter crime, and avoidance of forcing private property owners to act as insurers of public safety, (*Sharon P.*, at 1190, 1994) go beyond the single legitimate interest needed to satisfy the rational basis test.

The balance struck by the California Supreme Court was eminently fair to all concerned, and should not be disturbed for any reason.

CONCLUSION

For all of the foregoing reasons, Respondent APCOA, Inc., respectfully requests this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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